



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Daniel LICARI et al.

Art Unit: 1657

Application No.: 10/562,902

Examiner: Afremova, V.

Filed: November 22, 2006

Attorney Dkt. No.: 71247-0051

For: MEDIUM FOR CONSERVATION OF ORGANS, BIOLOGICAL TISSUES OR LIVING CELLS

ELECTION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Office Action of December 16, 2008, a petition for a three month extension of time is made and payment is addressed at the end of this filing.

Applicants elect the Group I invention, claims 1-10 with traverse.

In making the restriction requirement, the Examiner alleges that the claims lack a single general inventive concept. The basis for this allegation is the contention that United States Patent No. 6,924,273 to Pierce teaches a composition comprising hyaluronic acid and sodium chloride. However, Pierce does not teach the medium of claim 1 for at least three reasons and cannot be used to support the restriction requirement.

First, the composition of Pierce does not include sodium chloride and hyaluronic acid but only sodium hyaluronate. NaCl is only cited in col. 5, line 17, as an example of a supplement that can be added to the formulation. No example is given with NaCl as a component of the Pierce composition.

Second, claim 1 requires the presence of a liquid nutritive base and this component is not even identified in the reasoning supporting the restriction requirement. In fact, Pierce does not teach a liquid nutritive base as disclosed in the instant specification. Such a liquid nutritive base contains all the necessary element for the preservation of living organs and biological tissues, see

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paragraph [0030] of Applicants' published application and claim 9, e.g., trace elements, amino acids, vitamins and a stabilizing buffer. Since the Examiner has not identified this aspect of claim 1 in Pierce, Pierce cannot support the allegation that the claims do not contain a single general inventive concept.

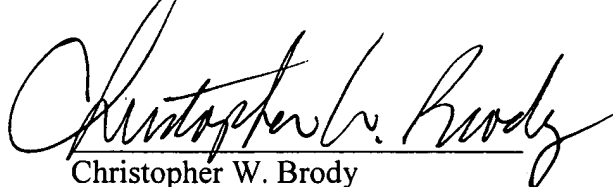
Lastly, claim 1 is directed to a preservation medium for living organs. This language must be considered in assessing the patentability of the claims when considering MPEP Section 2110.02 and how preamble language must be construed. The Examiner cannot just ignore the term "preservation" and "living organs" and consider the claim to read on the joint inflammation treatment composition of Pierce.

Since the basis for the restriction requirement is improper, the Examiner must examine all claims with the elected Group I invention.

Applicants petition for a three month extension of time and payment of the \$555.00 fee is submitted herewith by check.

Please charge any fee deficiency or credit any overpayment to Deposit Account No. 50-1088.

Respectfully submitted,
CLARK & BRODY

A handwritten signature in cursive script, appearing to read "Christopher W. Brody", written over a horizontal line.

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